

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Air Passenger Rights v. WestJet Airlines Ltd.*,
2025 BCSC 2145

Date: 20251030
Docket: S254452
Registry: New Westminster

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Air Passenger Rights

Petitioner

And

WestJet Airlines Ltd.

Respondent

Before: The Honourable Madam Justice Sharma

On judicial review from: An order of the Civil Right Tribunal, dated July 5, 2024
(*Boyd v. WestJet Airlines Ltd.*, 2024 BCCRT 640).

Reasons for Judgment

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Place and Date of Trial/Hearing: Vancouver, B.C.
March 24–25, 2025

Place and Date of Judgment: New Westminster, B.C.
October 30, 2025

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I. OVERVIEW

[1] This is an application for judicial review of a decision of the Civil Resolution Tribunal (the “Tribunal”) dated July 5, 2024: *Boyd v. WestJet Airlines Ltd.*, 2024 BCCRT 640 (the “Decision”).

[2] The Tribunal dismissed, in part, a claim for compensation made against the respondent WestJet Airlines Ltd. (“WestJet”) due to flight disruption. The compensation sought is established by the *Air Passenger Protection Regulations*, SOR/2019-150 [*Passenger Regulation*].

[3] That claim was brought by Anne Boyd and Robert Boyd (the “Passengers”), who are not parties to this proceeding. After the Decision was rendered, they purported to assign their claim for compensation pursuant to the *Passenger Regulation* to the petitioner.

[4] The petitioner submits that the Tribunal’s dismissal of the Passengers’ claim for \$2,000 should be set aside, and the Court should either award that compensation to it or remit the issue back to the Tribunal. WestJet submits the Decision should stand because it is correct. It also challenges the petitioner’s standing and the validity of the assignment. The Tribunal made submissions, but took no position on the relief sought.

[5] The parties disagreed about the issues that need to be addressed and in what order. The following issues arise from their submissions:

- a) Does the petitioner have standing to bring the application for judicial review in this case?
- b) Is the assignment valid and enforceable with regard to the petition for judicial review?
- c) Should the portion of the Decision denying the Passengers’ claim for compensation under the *Passenger Regulation* be set aside?

[6] In my view, the resolution of a single question is determinative of all these issues: is the Passengers' claim for compensation under the *Passenger Regulation* a debt?

[7] I conclude it is not. Given that answer, I find it necessarily follows that the petitioner does not have standing to seek judicial review because, among other things, the assignment is invalid and unenforceable.

[8] Furthermore, my conclusion that the claim for compensation under the *Passenger Regulation* is not a debt inevitably raises the question as to whether the Tribunal had jurisdiction over the Passengers' claim in the first place. In my view, a review of the governing legislation and leading case from the Supreme Court of Canada confirms it did not. Although the parties did not directly address that issue, it cannot be avoided because it is inexorably linked to the issues raised by the petition.

[9] The only remaining issue is the appropriate remedy. I have directed the parties to attend a brief appearance before me to address whether they want to make further submissions on that issue (see paras. 111–113).

II. FACTS

[10] In November 2022, the Passengers purchased WestJet tickets to travel from Kelowna, British Columbia, to Rome, Italy, on May 18, 2023. They were initially scheduled to fly from Kelowna to Calgary on May 18, 2023. From Calgary, they were scheduled to fly to Rome the same day, leaving at 18:05, arriving in Rome at 11:55 local time on May 19, 2023. The stopover in Calgary would have been two hours.

[11] WestJet pilots are unionized and represented by the Air Line Pilots Association (the "Pilots"). In May 2023, the Pilots were in the process of negotiating a new collective agreement with WestJet.

[12] The Pilots issued a strike notice on May 15, 2023, pursuant to the *Canada Labour Code*, R.S.C. 1985, c. L-2, s. 87.2(1). In response to the strike notice, WestJet issued a lockout notice. The federal legislation provides that employees can

legally strike and employers can legally lock out employees no sooner than 72 hours after the issuance of a strike or lockout notice: *Canada Labour Code*, s. 87.2(2)–(3). In this case, a legal strike and/or lockout could commence as of 3:00 am MDT on May 19, 2023.

[13] The Passengers took their scheduled flight from Kelowna to Calgary on May 18, 2023. However, their flight to Rome was cancelled due to the ongoing labour disruption. They received notification of the cancelation by email in the morning of May 18, 2023.

[14] The Passengers were rescheduled onto flights to get them to Rome, which included flights operated by other airlines. Their rescheduled journey was comprised of the following:

- a) WestJet flight from Calgary to Portland on May 19, 2023;
- b) Delta Airlines flight from Portland to Amsterdam on May 20, 2023; and,
- c) Italia Transporto Aero flight from Amsterdam to Rome on May 20, 2023.

[15] Thus, the Passengers arrived in Rome on May 20, 2023, more than 24 hours later than their originally scheduled WestJet flight.

[16] On May 19, 2023, at about 1:00 am ET, the Pilots and WestJet came to a tentative agreement, evading the strike and lockout.

[17] The Passengers made a complaint pursuant to the *Passenger Regulation* to WestJet for compensation and for their out-of-pocket expense arising from their delayed travel. WestJet's response was that the flight disruption was caused by a labour dispute and, therefore, out of their control, so no compensation was owing.

A. The Decision

[18] The Passengers filed a claim with the Tribunal on July 4, 2023. They sought a total of \$2,227.25 in compensation consisting of:

- a) \$185.25 for the hotel in Calgary for May 18, 2023;
- b) \$92.00 for meals purchased May 18, 2023, to May 20, 2023; and,
- c) \$2,000 for standardized compensation for delay under s. 19(1) of the *Passenger Regulation*.

[19] The Tribunal hearing proceeded by way of written submissions. In the Decision, the Tribunal decided that a 72-hour strike notice qualifies as a labour disruption (at paras. 13–19) and dismissed the Passengers’ claim for \$2,000 for standardized compensation. However, it granted the Passengers’ claim for reimbursement of \$277.25 for hotel and meals costs, \$15.78 in pre-judgment interest, and \$62.50 in Tribunal fees.

B. The Assignment

[20] The petitioner is a non-profit organization which advocates for air passenger rights. Its mandate includes engaging in public interest advocacy for the travelling public. Gabor Lukacs is its founder and serves as a director and president.

[21] Mr. Lukacs filed an affidavit on July 29, 2024. He deposed that the petitioner was assisting the Passengers during the Tribunal hearing and provided them with information to advance their claim.

[22] On July 24, 2024, the Passengers assigned their claims against WestJet to the petitioner. Mr. Lukacs attached to his affidavit the document that he and the Passengers signed, which purports to effect that assignment. The following extracts from that document are relevant:

BACKGROUND:

- A. The Assignors have a claim against WestJet Airlines Ltd. and their affiliates for a trip from Kelowna, B.C. to Rome, Italy on or about May 19, 2023.
- B. The Assignors desire to absolutely assign their Claim, including any right of action, right of appeal, and right to seek judicial review, to the Assignee.

C. The Assignee agrees to accept the absolute assignment from the assignors.

ABSOLUTE ASSIGNMENT TO ASSIGNEE:

1. The Assignor hereby assigns to the Assignee absolutely with full title of all their right, title and interest in respect of the Claim and the right to bring and defend legal proceedings (including actions, complaints, appeals and judicial review), and obtain and retain any relief recovered. For greater certainty, this assignment includes the right to seek judicial review of *Boyd v. WestJet Airlines Ltd.*, 2024 BCCRT 620 and the right to accept/deposit the \$355.53 payment from WestJet.

2. The Assignor agrees to reasonably assist the Assignee in pursuing the claim.

3. If this Assignment is to any extent invalid or incapable of being enforced, then this Assignment shall be deemed replaced with a valid and enforceable assignment under section 36 of the British Columbia *Law and Equity Act* and that comes closest to expressing the intention of such invalid or unenforceable term.

4. This Assignment and any disputes in respect of it shall be governed by and construed in accordance with the laws of British Columbia, Canada.

C. This Litigation

[23] On July 29, 2024, the petitioner filed the petition seeking orders to:

- a) set aside the portion of the Tribunal’s order dismissing the \$2,000 claim; and,
- b) grant to it \$2,000 together with pre-judgment interest; or,
- c) alternatively, remit the claim back to the Tribunal to be decided in accordance with this Court’s reasons.

[24] The only issue identified in the petition is the legal interpretation of the *Passenger Regulation*. Specifically, the petitioner challenges the Tribunal’s conclusion that the issuance of the strike and lockout notices constituted a “labour dispute” within the meaning of the *Passenger Regulation*.

[25] In its response to petition, WestJet submitted the petition should be dismissed for, among others, the following reasons:

- a) the petitioner does not have standing;
- b) the Passengers' assignment to the petitioner is invalid; and
- c) the Decision was correct.

[26] The Tribunal takes no position on any of the relief sought. Its submissions described the Tribunal's governing legislation and processes and addressed legal principles relating to the law of assignment, standing, standard of review, and possible remedies available upon judicial review.

III. ISSUES

[27] As stated, I find all disputed issues between the petitioner and WestJet can be resolved by determining whether the compensation sought by the petitioner is a debt. To answer that question, the legislative scheme that mandates the amount of compensation for flight delay, cancellation or denial of boarding must be examined and understood.

[28] The Tribunal submits that the nature of claims under the *Passenger Regulation* and the Tribunal's "jurisdiction to resolve them were not at issue in the [Decision]; they are also not at issue in this judicial review."

[29] I do not agree. An application for judicial review seeks to invoke this Court's power as a superior court to grant relief "in the nature of" the prerogative writs, or to grant declarations and/or injunctions "in relation to the exercise of a statutory power": *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [JRPA], s. 2(2).

[30] Relief granted under the JRPA is discretionary and that is concerned primarily with ensuring decisions by an administrative decision-maker are only made within the strict bounds of the applicable legislation. These fundamental concepts were recently articulated by Justice Douglas in *Bennett v. Seto*, 2025 BCSC 1313 at paras. 25–30, and the following paragraphs are particularly germane:

[26] The role of the court on judicial review is to ensure that a statutory decision-maker or tribunal acted within the authority bestowed upon it by the Legislature: *Dunsmuir v. New Brunswick (Board of Management)*, 2008 SCC

9 at para. 28. Judicial review functions to maintain the rule of law while giving effect to legislative intent: *Vavilov* at para. 2.

[27] The court is not to hear new evidence or argument or to decide or re-decide the case on judicial review; rather, it is simply to ensure that the tribunal: (1) acted within its jurisdiction by deciding what it was directed to decide by its constituent legislation; and (2) did not lose jurisdiction by failing to provide a fair hearing or by rendering a decision outside the degree of deference owed by the reviewing court: *Acton Transport Ltd. v. British Columbia (Director of Employment Standards)*, 2010 BCCA 272 at paras. 19-23; *Vandale v. Workers' Compensation Appeal Tribunal*, 2013 BCCA 391 at para. 54; *Powell v. British Columbia (Residential Tenancy Branch)*, 2015 BCSC 2046 at paras. 49-51; *Alberta Teachers' Assn. v. Alberta (Information & Privacy Commissioner)*, 2011 SCC 61 at paras. 22-26.

...

[29] If the court chooses to exercise its discretion to grant prerogative relief, the appropriate remedy on judicial review is generally to set aside all or part of the decision and any accompanying order, along with a direction that the Director, or her delegate, reconsider the application for dispute resolution pursuant to s. 5 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241: *Vavilov* at paras. 141-142.

[31] Thus, the legislative authority that authorizes a decision being challenged under the *JRPA* underlies every application for judicial review. It is partly for that reason that the Attorney General has the right to notice and to make submissions to the court for any petition for judicial review: *JRPA*, s. 16.

[32] As a corollary to the preceding principles, I must be satisfied that this Court has jurisdiction under the *JRPA* to grant the relief sought. The petition seeks orders based on its asserted interpretation of federal legislation. It is not clear to me in the circumstances of this case that this Court could or should opine on the correct interpretation of federal legislation, especially in the absence of the Canadian Transportation Agency. Yet, that is the primary legal basis for the relief sought in the petition.

IV. THE LEGISLATION AND ITS INTERPRETATION

[33] At the root of this dispute are the statutory provisions that instituted the standardized minimum compensation payable for delayed or cancelled flights. That compensation does not exist in isolation, but is one part of the federal government's regulation of transportation generally, including air travel. It also implicates Canada's

obligations as a signatory to the *Convention for the Unification of Certain Rules for International Carriage by Air*, 2242 U.N.T.S. 309 [*Montreal Convention*], an international convention regarding air travel. An appreciation of that regulatory context is vital to resolving the dispute raised in this litigation.

A. The Regulation of Air Travel

[34] Air transportation is regulated under Part II of the *Canada Transportation Act*, S.C. 1996, c. 10 [CTA]. The CTA continues the National Transportation Agency, now known as the Canadian Transportation Agency (the “Agency”): s. 7(1). Section 86(1) of the CTA grants general regulation-making authority to the Agency. In *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, the Supreme Court of Canada stated that the CTA is “highly specialized regulatory legislation with a strong policy focus”, noting that the Agency is responsible for interpreting its own legislation: at paras. 98, 100; see also *Northwest Airlines Inc. v. Canadian Transportation Agency*, 2004 FCA 238 at paras. 26, 30; *Lukács v. Canada (Canadian Transportation Agency)*, 2015 FCA 269 at para. 28; *Air Passenger Rights v. Canada (Attorney General)*, 2024 FCA 128 at para. 4; *Westjet v. Lareau*, 2025 FCA 149 [*Lareau*] at para. 76. The Agency’s ability to interpret its own legislation is consistent with it having specialized expertise; Its decisions are entitled to deference.

[35] Under s. 86(1)(h) of the CTA, the Agency may make regulations “respecting traffic and tariffs, fares, rates, charges and terms and conditions of carriage for international service”, including:

(iii) authorizing the Agency to direct a licensee or carrier to take the corrective measures that the Agency considers appropriate and to pay compensation for any expense incurred by a person adversely affected by the licensee’s or carrier’s failure to apply the fares, rates, charges or terms or conditions of carriage that are applicable to the service it offers and that were set out in its tariffs, if the Agency receives a written complaint and, if the complaint is related to any term or condition of carriage concerning any obligation prescribed by regulations made under subsection 86.11(1) ...

[36] The issues in this case concern amendments to the CTA, which were brought about through the enactment of the *Transportation Modernization Act*, S.C. 2018, c.

10. Among other things, those amendments included a direction that the Agency “shall ... make” regulations “respecting the carrier’s obligations in the case of flight delay, flight cancellation or denial of boarding, including (i) the minimum standards of treatment of passengers that the carrier is required to meet and the minimum compensation the carrier is required to pay for inconvenience when the delay, cancellation or denial of boarding is within the carrier’s control”: *CTA*, s. 86.11(b).

[37] It was in response to this statutory mandate that the Agency developed and enacted the *Passenger Regulation* in 2019 that is the central focus of this case.

[38] Section 86.11(4) of the *CTA* deems that the obligations imposed by the *Passenger Regulation* form the terms and conditions of the carrier’s tariff. Section 2(1) of the *Passenger Regulation* confirms that passengers are entitled to compensation according to a tariff if its terms are more favourable than those set by the regulation.

B. Process for Claiming Compensation

[39] Section 85.01(1) of the *CTA* requires carriers to establish a process for dealing with claims related to fares, rates, charges, or terms or conditions of carriage applicable to the services they provide. Section 5(1) of the *Passenger Regulation* requires carriers to make terms of carriage relating to, among other things, flight delay, flight cancellation, or denial of boarding available on all digital platforms and documents. It also dictates that those terms must be in simple, clear, and concise language.

[40] Passengers have one year following the delay, cancellation, or denial of boarding to make a claim with the carrier in writing: *Passenger Regulation*, s. 19(3). The carrier has 30 days to respond, either by issuing compensation or providing reasons for why compensation is not owed: *CTA*, s. 85.01(2).

[41] Section 85.04 of the *CTA* permits passengers to file complaints with the Agency related to tariffs:

85.04 (1) A person may file a complaint in writing with the Agency if

- (a) the person alleges that a carrier failed to apply a fare, rate, charge or term or condition of carriage applicable to the air service it offers that is set out in its tariffs;
- (b) the person is adversely affected by the failure to apply that fare, rate, charge or term or condition of carriage;
- (c) the person seeks compensation or a refund as set out in the carrier's tariffs or compensation for expenses incurred as a result of that failure; and
- (d) the person made a written request to the carrier to resolve the matters to which the complaint relates but they were not resolved within 30 days after the day on which the request was made.

[42] Section 85.02(1) requires the Agency Chairperson to delegate Agency staff to undertake the role of “complaint resolution officers” (“CR Officers”) for the purpose of managing complaints under ss. 85.04–85.12 of the *CTA*.

[43] A CR Officer may refuse to deal with a complaint if they are of the opinion that (*CTA*, s. 85.04(2)):

- a) the complaint does not meet the criteria set out in s. 85.04(1);
- b) it is clear on the face of the complaint that the carrier has complied with the *Passenger Regulation*; or
- c) the complaint is vexatious or made in bad faith.

[44] Once satisfied the complaint can be dealt with, the CR Officer first attempts to resolve the complaint through mediation, a process that must start within 30 days of the complaint being filed: *CTA*, s. 85.05(1). If an agreement is reached through mediation, it is enforceable as if it were an order of the Agency: *CTA*, s. 85.05(2). Section 33(1) confirms that orders of the Agency may be made and enforceable as an order of the Federal Court or any superior court.

[45] However, if no agreement is reached via mediation, the CR Officer will adjudicate the matter. In that case, the CR Officer must either dismiss the complaint or make an order pursuant to s. 85.07(1): *CTA*, s. 85.06(1).

[46] The options available to the CR Officer if the complaint is not dismissed are set out in s. 85.07(1) of the *CTA*:

85.07 (1) If the complaint resolution officer finds that the carrier that is the subject of the complaint has failed to apply a fare, rate, charge or term or condition of carriage applicable to the air service it offers that is set out in its tariffs, the complaint resolution officer may order the carrier to

(a) apply a fare, rate, charge or term or condition of carriage that is set out in its tariffs; and

(b) compensate the complainant for any expenses they incurred as a result of the carrier's failure to apply a fare, rate, charge or term or condition of carriage that is set out in its tariffs.

[47] An order made under s. 85.07(1) may be filed with the Agency, after which time it becomes enforceable as if it were an order of the Agency: *CTA*, s. 85.07(3).

[48] In addition, CR Officers are directed to pay heed to previous decisions of CR Officers if a complaint concerns the issue of whether a flight delay, flight cancellation or denial of boarding was within a carrier's control, was within the carrier's control and required for safety reasons, or was outside the carrier's control: *CTA*, s. 85.08.

[49] The *CTA* empowers the Agency to issue guidelines regarding the complaints filed under s. 85.04(1), as explained in s. 85.12(1):

85.12 (1) The Agency may issue guidelines

(a) respecting the manner of and procedures for dealing with complaints filed under subsection 85.04(1); and

(b) setting out the extent to which and the manner in which, in the Agency's opinion, any provision of the regulations applies with regard to complaints.

[50] Such guidelines are binding on CR Officers and must be published: *CTA*, s. 85.12(2)(3). In addition, specific details of orders made by CR officers must be made public (*CTA*, s. 85.14), and the Agency must indicate the number and nature of complaints filed in its annual report (*CTA*, s. 85.15).

[51] Section 41(1) of the *CTA* states that an appeal from the Agency lies with the Federal Court of Appeal on a question of law or jurisdiction if leave is obtained within one month after the date of the decision being appealed.

C. Compensation Under the *Passenger Regulation*

[52] Section 10 of the *Passenger Regulation* addresses situations where there is a delay, cancellation or denial of boarding outside the carrier’s control—*i.e.*, situations where compensation is not owed by a carrier. Section 10 contains a non-exhaustive list of situations that are outside the carrier’s control, including what is at issue in this case, “a labour disruption within the carrier or within an essential service provider such as an airport or an air navigation service provider”: s. 10(1)(j).

[53] Section 11 sets out passengers’ rights where there is delay, cancellation or denial of boarding that is within the carrier’s control but required for safety reasons. Carriers are obliged to provide specific information to affected passengers and depending on the circumstances, such as when passengers were informed of a delay or cancellation and the length of any delay, carriers may be obliged to provide free-of-charge accommodation, food, drink, access to communication, and in some cases a refund or alternate travel arrangements.

[54] Section 12 addresses situations where the delay, cancellation or denial of boarding is within the carrier’s control and not required for safety purposes. Sections 12(2)(d) and 12(3)(d) state passengers informed less than 14 days before departure that their flight will be delayed over three hours or cancelled are entitled to the minimum compensation set out in s. 19.

[55] Section 19 sets out the minimum compensation carriers must provide based on the size of carrier and length of delay between the passenger’s arrival and the time of arrival on the passenger’s original ticket. For large carriers, compensation for delays between three and six hours is \$400; between six and nine hours is \$700; and more than nine hours is \$1,000. For small carriers those amounts respectively are: \$125, \$250, and \$500.

D. The *International Air Judgment*

[56] In *International Air Transport Association v. Canada (Transportation Agency)*, 2024 SCC 30 [*International Air*], the Supreme Court of Canada interpreted the

Passenger Regulation as part of a statutory appeal brought by several air transportation associations, whose members carry approximately 82% of the world's air traffic (the "Appellants"). The Appellants challenged the *Passenger Regulation* as being in conflict with the exclusivity principle of the *Montreal Convention* and *ultra vires* the Agency's regulation-making authority under the *CTA*.

[57] The Supreme Court of Canada dismissed the challenge. In doing so, the Court addressed issues that are foundational to the dispute in this petition—namely, the proper interpretation of the *Passenger Regulation* as a compensation scheme and the role of the Agency in administering that scheme. I discuss later why I find the Court's analysis inescapably leads to the conclusion that compensation is not a debt.

[58] The Court described the government's motivation for enacting the *Passenger Regulation*:

[89] The Attorney General and the Agency submit that the *Regulations* mark an evolution in the government's approach away from a "piecemeal" system that relied on carrier-led tariff development towards one that ensures predictable payments to passengers who are inconvenienced during carriage by air to, from or within Canada. The *Regulations* were put in place, following a review of the *CTA*, with a view to correcting an "acute imbalance in market power' between air passengers and air carriers, and the 'unusual situation' where Canadian air passengers had to rely on foreign customer protection measures when traveling abroad" [cite omitted]. Parliament responded to this situation by directing the Agency to put in place a system of standardized compensation.

[90] The *Regulations* are, thus, best understood as providing for statutory entitlements under a consumer protection scheme. Passengers claiming under the *Regulations* need not show what harm, if any, they have suffered in order to claim compensation. The *Regulations* do not tie compensation to harm and inconvenience; rather they mandate compensation for delay, cancellation or denial of boarding based on the time by which a passenger's arrival at their ultimate destination is delayed. Unlike the *Montreal Convention*, the *Regulations* do not enable a carrier to avoid having to pay compensation otherwise due to a passenger by invoking a due diligence defence or pointing to contributory negligence. As long as the disruption in question occurred for a reason within the carrier's control and was not required for safety purposes, the compensation is fixed. Moreover, the Agency is empowered to extend a finding that compensation is owed to one passenger to other passengers similarly situated. Compensation owed under the *Regulations* for lost or damaged baggage is tied to the baggage fees charged by the carrier, not to the harm. The *Regulations* are enforced by

Agency-designated complaint resolution officers whose primary adjudicative duty consists of ensuring that carriers adhere to terms set in their tariffs.

[59] As noted in para. 90, the Court interpreted the *Passenger Regulation* as a consumer protection scheme that provides statutory entitlements, not an action in damages. What makes standardized compensation different from damages is that standardized compensation is owed identically to all claimants, irrespective of the harm they have suffered: *International Air* at paras. 42, 90.

[60] The Court also commented on the role of the Agency within the regulatory scheme, stating one of its primary functions is to adjudicate commercial and consumer transportation disputes: *International Air* at para. 6. Importantly, both the *CTA* and the *Passenger Regulation* authorize the Agency to enforce carrier compliance with the compensation provisions of the *Passenger Regulation* and extend compensation to passengers impacted by the types of disruptions enumerated in the *Passenger Regulation*: *International Air* at para. 88.

[61] In addition, the Court laid out the compensation payable by carriers under the *Passenger Regulation* for a variety of circumstances (paras. 81–85), as well as enforcement mechanisms (paras. 86–88).

V. COMPENSATION UNDER THE PASSENGER REGULATION IS NOT A DEBT

[62] The petitioner’s position is that since the carriers’ obligations set out in the *Passenger Regulation* regarding compensation for flight delays and cancellations are deemed to form part of the terms and conditions in carriers’ tariffs (*CTA*, s. 86.11(4)), the Passengers’ claim to the Tribunal was a contractual claim for debt. To support that proposition, the petitioner submits that “the Supreme Court of Canada already determined that the fixed standard compensation for delays and compensation under the Regulations is a debt”, citing paras. 89–90, 94–95, and 97 of *International Air*.

[63] That proposition is inaccurate.

[64] The Court never described the compensation payable under the *Passenger Regulation* as a debt owed by carriers to passengers. Instead, the Court held that the recent amendments to the *CTA*, including enactment of the *Passenger Regulation*, did not create an action for damages. The amendments created a “system of standardized compensation” that provides statutory entitlements where amount of compensation is not tied to harm or inconvenience suffered: *International Air* at paras. 89, 94. The amount of compensation is not based on a measure of a passenger’s loss. This promotes and is consistent with the consumer protection aims of the legislation by providing predictable payments.

[65] The petitioner also asserts that the compensation set out in the *Passenger Regulation* is a debt “written into the passenger contracts”. While the obligation might be akin to a term “written into the passengers’ contracts” by operation of statute, that does necessarily make it a debt recoverable from the Tribunal.

[66] The fundamental flaw with the petitioner’s position is to reason that since the compensation is not an action in damages, it must be a claim in debt. Logically, that result does not follow: it is based on a false dichotomy that money owed is either damages or a debt. Furthermore, the petitioner’s position disregards the comprehensive scheme created by federal government of which the *Passenger Regulation* is one part. It also ignores the context in which the Supreme Court of Canada concluded the compensation is not akin to an action in damages.

[67] In *International Air*, the Court determined that claims for compensation under s. 19 of the *Passenger Regulation* is not a claim for damages, but did not explicitly state they were not claims in debt. For the reasons explained in this judgment, I find it is inescapable that such claims cannot be pursued as claims in debt. That conclusion is the only one available if one follows the Court’s reasoning and understands the regulatory scheme created by the *CTA* and *Passenger Regulation*.

[68] The challenge in *International Air* was based on the proposition that the *Passenger Regulation* violates the exclusivity principle set out in the *Montreal*

Convention. Canada has implemented the *Montreal Convention*¹ into domestic law through amendments to the *Carriage by Air Act*, R.S.C. 1985, c. C-26, by *An Act to amend the Carriage by Air Act*, S.C. 2001, c. 31: *International Air* at para. 9.

[69] As summarized by the Court at para. 8, the *Montreal Convention* has three central objectives:

- a) to limit carrier liability related to claims for damages for death or bodily injury, damage to or loss of baggage and cargo, and for delay;
- b) to protect interests of passenger and shippers by creating presumptive liability with respect to those claims; and,
- c) to seek to have member countries create uniform rules governing claims arising from international air transportation.

[70] The Court in *International Air* went on to provide a description of the *Montreal Convention* at para. 34, including citing article 29, which codifies the “exclusivity principle, reproduced here:

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

[71] The Appellants argued that the creation of a schedule of compensation for, among other things, flight delays and flight cancellations, violated the exclusivity principle in the *Montreal Convention*. The Court’s analysis on that issue turned on whether the *Passenger Regulation* created an action for damages.

[72] After describing the process of making a complaint first to the carrier and then to the Agency (paras. 80–87), the Court noted that the *CTA* and *Passenger*

¹ Although not directly relevant, it is interesting to note that federal jurisdiction over air transport is anchored not within sections 91 or 92(10) of the *Constitution Act*, 1867, but as falling under both s. 132 of the (power to perform obligations relating to international treaties) and the power to make laws for the peace, order and government of Canada: *Regulation and Control over Aeronautics in Canada (Re)* [1932] A.C. 54; [1932] 1 D.L.R. 58 (JCPC).

Regulation “enforce carrier compliance with the compensation provided for in the [*Passenger Regulation*], and ... extend compensation owed to one passenger to others who are impacted by the same disruption” (para. 88). The Court then explained how the compensation operates as a consumer protection scheme (see para. 58 above, reproducing *International Air* at paras. 89–90), pointing out that compensation is not tied to the harm or inconvenience suffered by the passenger, but based on fixed amounts prescribed by regulation.

[73] The Court concluded that the compensation provided for in the *Passenger Regulation* is not an action for damages and, therefore, there is no conflict between the *Passenger Regulation* and the *Montreal Convention*. The compensation creates an “entitlement to standardized compensation that does not seek to measure a passenger’s loss” and as such it falls outside the scope of the *Montreal Convention: International Air* at para. 94.

[74] The petitioner heavily relies on the phrase “payment of an amount that is already owed” from *International Air* as supporting its position. It relies on that phrase to argue compensation for delayed flights is merely a contractual debt to which airlines are already bound once a ticket is issued. According to the petitioner, the incorporation of the *Passenger Regulation* compensation scheme into carriers’ tariffs transformed it from a statutorily created compensation to a debt enforceable at common law.

[75] That logic is flawed for several reasons.

[76] It is grounded on parsing one phrase from one sentence in a paragraph of *International Air*, which overlooks the context in which the Court made the statement. The phrase is contained in para. 97:

[97] Second, the appellants submit that, because claims for compensation under the *Regulations* can be vindicated in court, the *Regulations* do in fact give rise to “actions for damages” despite the primacy of the administrative enforcement mechanism under the *CTA*. But the fact that claims payable pursuant to the *Regulations* can be vindicated by way of an action in court does not change the nature of the compensation of the *Regulations* themselves. The *Regulations* make no provision for claims to be filed in court. And even assuming, without deciding, that judicial proceedings that seek to vindicate a claim under the *Regulations* amount to an “action” for the

purposes of the *Montreal Convention*, the claim would not be for “damages”. Where such claims are filed in courts of law, the claim is not in the nature of one for damages, because the claim is not tied to any harm suffered by the claimant and does not require any “case-by-case assessment” or relate to “compensation for harm incurred” (*International Air Transport Association v. Department for Transport*, at para. 43; *Zicherman*, at p. 227). Instead, the claim is for payment of an amount that is already owed as a matter of standardized entitlements provided for under a consumer protection scheme.

[77] The petitioner isolates and focusses upon the phrase “payment for amount already owed” to argue the standardized minimum compensation incorporated into the tariff is the legal equivalent of creating a debt for a fixed amount that is recoverable at common law. That reasoning ignores other portions of the paragraph inconsistent with the petitioner’s position.

[78] In the first sentence, the Court describes the Appellants’ position that compensation amounts to a claim in damages “despite the primacy of the administrative enforcement mechanism under the *CTA*”. The Court recognizes that “[t]he *Regulations* make no provision for claims to be filed in court”. Further, the Court’s statement that “the fact that claims payable ... can be vindicated” in court must be read together with its statement that “[e]ven if, assuming without deciding, that judicial proceedings that seek to vindicate a claim ... amount to an action”, it would not be a claim for damages.

[79] In short, I find the petitioner’s position is based on a misreading of para. 97 of *International Air*. More fundamentally, however, I also find the petitioner’s position fails to account for the juridical basis of the standardized minimum compensation. The compensation was not a contractual term to which the airlines agreed to be bound. It is a statutorily imposed scheme.

[80] Carriers’ obligations under the *Passenger Regulation* are “deemed to form part of the terms and conditions set out in the carrier’s tariffs”: *CTA*, s. 86.11(4). Tariff is defined in s. 55(1) of the *CTA* to mean the “schedule of fares, rates, charges and terms and conditions of carriage applicable to the provision of an air service and other incidental service”. However, the incorporation of the scheme into the tariff does not operate to make the carriers’ obligations to passengers contractual in

nature. That is because resolving a disagreement about whether compensation is payable is not merely a private law dispute between carriers and passengers. Determining whether compensation is payable requires interpreting and applying a federal statute and its regulations over which the Agency has expertise.

[81] Moreover, that determination turns on factors the Agency decided to incorporate into the *Passenger Regulation*, including whether the disruption was within the carriers' control; within the carriers' control, but required for safety reasons; or outside the carriers' control. The amount of compensation depends upon the amount of advance notice passengers received, the length of the delay, and the size of the carrier.

[82] Those features differentiate the compensation under the *Passenger Regulation* from employment-related statutory entitlements discussed in *International Air* at para. 95. The Court referred to Ontario case law regarding employment standards, noting that claims for statutory entitlement for termination and severance did not duplicate an action for damages by an employee, so there was no "double recovery". The Court noted those statutory "entitlements could be contrasted with damages in the employment context, which seek to correct the loss suffered by a plaintiff through monetary compensation, having regard to factors such as 'the age of the employee, the likely length of time to find another position, the actual finding of another position etc.'": at para. 95. By analogy, the Court concluded the statutory entitlements under the *Passenger Regulation* did not conflict with the limitation on damages under the *Montreal Convention*.

[83] In this case, there is no distinction between the claim the Passengers started at the Tribunal and what they could have sought from the Agency. Both depend entirely on the interpretation and application of the *Passenger Regulation*.

[84] The regulation of air transportation is complex and comprehensive. Because carriers' obligations with respect to compensation are incorporated into the tariff, a passenger's first recourse for compensation is through the carrier itself: *CTA*, ss. 85.01, 85.04(1); *Passenger Regulation*, s. 19(3). However, that dispute is not

entirely private because the Agency has stipulated how the carriers must approach passengers' complaints.

[85] As previously noted, carriers are obliged to create processes to handle statutory compensation claims: *CTA*, s. 85.01(1). The *Passenger Regulation* has explicit and very specific requirements as to how notices must be worded and made available to passengers. Carriers must provide specifically worded notice on all digital platforms and documents about the compensation available (s. 5(5)) and must display particularly worded notices at airport check-ins desks, self-service machines, and boarding gates (s. 7(1)). The *Passenger Regulation* also stipulates the timing and content of notice that carriers must give to passengers affected by delay cancellation or denial of boarding: ss. 12–13.

[86] If dissatisfied with the carriers' response, passengers may file a complaint with the Agency, and the *CTA* comprehensively addresses how those complaints are adjudicated, as described above (paras. 39–55). As noted above (para. 34), the Agency has the expertise on how the *Passenger Regulation* should be interpreted and applied. Moreover, it is required to keep track of complaints and publish data about them: *CTA*, ss. 85.14, 85.15.

[87] In other words, the processes in place have all the hallmarks of an exhaustive and comprehensive scheme to address passengers' right to compensation from carriers upon flight delay, cancellation, or denial of boarding. Nothing about that scheme suggests that the statutory compensation is merely a contractual obligation owed by carriers to be resolved privately by small claims actions.

[88] I infer the Passengers did not pursue a complaint to the Agency since there is no indication in the evidence on the record or in the Decision that they did so. Instead, they proceeded directly to the Tribunal. In doing so, the Passengers have completely side-stepped the comprehensive scheme created by the federal government. They have done so on what I have found to be the erroneous premise that WestJet owed them compensation as a matter of private contract law. In my view, that route was not available to them.

[89] For all those reasons, I find that a claim for compensation for flight delays, cancellations, or denial of boarding is not enforceable as a contractual debt and must be resolved with the Agency pursuant to the *CTA* and *Passenger Regulation*.

VI. OTHER ISSUES

[90] My conclusion that the minimum compensation mandated by the *Passenger Regulation* for, among other things, flight delay or cancellation is not enforceable as a debt has further implications for this petition.

A. Assignment is Invalid

[91] WestJet submits the petition should be dismissed because the assignment is invalid. The petitioner's response to that argument rests entirely on its position that it was pursuing a debt claim. My reasoning on that issue applies here, which defeats the petitioner's arguments on this point.

[92] However, regardless of my discussion and conclusion about whether the compensation provided for under the *Passenger Regulation* is a debt, I find the assignment is invalid. The petitioner provided no authority supporting the notion that one could assign a right to seek judicial review and only addressed the ability to assign claims in debt.

[93] Parties cannot confer, by agreement or otherwise, rights available under the *JRPA*. Those rights have evolved over centuries from their origin as an exercise of the Royal Prerogative to oversee and correct actions of Parliament against citizens. Today, that is expressed as the Court exercising a supervisory jurisdiction over administrative actors, as discussed above (paras. 29–31).

[94] The court's role in a judicial review is different than when resolving private law disputes because it is "a limited remedy, engaging the supervisory authority of the Superior Courts over the work of administrative officials and tribunals" and not "a free-standing mechanism by which the courts take it upon themselves to administer complex administrative schemes": *Lawrence v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2025 BCCA 343 at para. 30.

[95] To put it another way, relief by way of judicial review does not enforce private rights between parties. It is a mechanism by which a person can seek relief from a superior court against the actions of the state. The petitioner's entire argument is based on the erroneous premise that the incorporation of the compensation scheme enacted by the *Passenger Regulation* into the tariff is merely a private, common law contractual term between passengers and airlines. For the reasons I have already given, I disagree.

[96] I conclude the assignment is invalid, which means the petition for judicial review has no legal basis.

B. Standing

[97] Independent of my conclusion that the assignment is invalid, I also find the petitioner has no standing to seek judicial review. It is well established that the right to seek judicial review is limited to a person aggrieved, affected or suffering some exceptional prejudice by the decision being challenged: *Bradshaw v. Workers' Compensation Board*, 2017 BCSC 1092 at para. 89. Justice Giaschi in *Gonzales Hill Preservation Society v. Victoria (City) Board of Variance*, 2021 BCSC 2091, provided a helpful summary of the general principles regarding standing under the *JRPA*:

[59] In *Kitimat (District) v. Alcan Inc.*, 2006 BCCA 562 at para. 47, the Court of Appeal endorsed the following quotation from Sara Blake, *Administrative Law in Canada*, 3rd ed. (Markham: Butterworths Canada Ltd., 2001), concerning standing on applications for judicial review:

Who may be heard on an application for judicial review? Generally, only persons who were parties before the tribunal or who are directly affected by the tribunal's decision may apply for judicial review. Some of the rules with respect to applications for judicial review state that any interested person may be heard. Others are silent on this point.

Any person who was a party before the tribunal may bring an application for judicial review, and is entitled to be served with notice of an application brought by another party. Also, any person who was entitled to be a party before the tribunal may be a party to an application for judicial review. Any person who is directly affected by the decision or action of the tribunal may apply for judicial review, or be a party to an application brought by another. Any person who appears to be interested or likely to be affected by the application for judicial review, should be served. A person who will be affected if the

application for review is successful, may apply for standing as a respondent to the application.

[60] The general test for private interest standing is that the petitioner must be “aggrieved”, “affected” or suffer some “exceptional prejudice” because of the impugned decision. This test is set out in *Bradshaw v Workers’ Compensation Board*, 2017 BCSC 1092 at para. 89:

[89] The authors of Brown and Evans, *Judicial Review of Administration Action in Canada* (Toronto: Carswell, 2014) v. 2, state the test in these terms at para. 4:3420:

At common law a person will have standing to seek a remedy in proceedings of judicial review if he or she is an “aggrieved person,” an “affected person”, or someone who is “exceptionally prejudiced” by the impugned administrative action. The requirements of any of these expressions of the common law test are two-fold: first an identification of the interest and, second, an assessment of its remoteness.

(See also: *Lee & Lee Enterprises Ltd. v. A.G.(B.C.) and BYO Holdings Ltd.*, 2004 BCSC 1546 at para. 18; *J.N. v British Columbia Commissioner for Teacher Regulation*, 2019 BCSC 2 at para. 93)

[61] In *Emerman v. Association of Professional Engineers*, 2008 BCSC 1186 at para. 19, Kelleher J. stated:

[19] To be accorded standing, a petitioner must demonstrate an interest in the proceeding. A petitioner will have an interest in the proceeding where he or she has a private right that has been infringed by the respondent, or which will cause or threaten to cause special damage which extends beyond that suffered by the general public (*Behr v. College of Pharmacists (British Columbia)*, 2005 BCSC 879). This interest may also be conferred by statute.

[62] The proposition that a petitioner must suffer some special form of damage beyond that suffered by the general public is also addressed in *Alberta Liquor* at paras. 8, 10, and 14, set out below.

[63] The general test has been expanded upon in that the sufficiency of the interest of the applicant can be demonstrated by the statutory regime underlying the impugned decision. Indeed, the underlying statutory regime can supplant the common law test and confer standing. This is reflected in *Sandhu v. British Columbia (Provincial Court)*, 2013 BCCA 88 at para. 35:

[35] The approach to be taken with respect to the issue of standing on a judicial review proceeding was set out in *Inland Revenue Commissioners v. National Federation of Self-Employed and Small Businesses Ltd.*, [1981] 2 All E.R. 93 at 108 (H.L.):

The correct approach in such a case is, in my opinion, to look at the statute under which the duty arises, and to see whether it gives any express or implied right to persons in the position of the applicant to complain of the alleged unlawful act or omission.

This passage was quoted with approval by this Court in *Saanich Inlet Preservation Society v. Cowichan Valley Regional District* (1983), 1983 CanLII 382 (BC CA), 147 D.L.R. (3d) 174, 44 B.C.L.R. 121 at 127-128 (C.A.).

[98] Only the Passengers or WestJet were directly affected by the Decision. Only they could seek judicial review of the Decision, which renders the petition unsustainable.

[99] The petitioner was not a party to the Decision and has no direct interest in it. Simply put, it is not entitled to seek compensation under the *Passenger Regulation* because it did not have its flight delayed or cancelled.

[100] I also find the petitioner cannot claim to have public interest standing. It seeks not only to overturn a portion of the Decision, but to receive the compensation provided for under the *Passenger Regulation*. It is attempting to enforce what it characterizes as a private remedy. However, it is not entitled to that remedy because it did not suffer the flight delay or cancellation. Public interest standing should not be extended where there are individuals more directly affected who are not before the court: *Sierra Club of Canada v. Canada (Minister of Finance) (T.D.)*, [1999] 2 FC 211, 1998 CanLII 9124.

C. The Tribunal's Jurisdiction

[101] The parties referred me to other decisions of the Tribunal, which explained its view that it has jurisdiction over claims for compensation under the *Passenger Regulation*, including those released after the Supreme Court of Canada's decision in *International Air. Reshaur v. WestJet Airlines Ltd.*, 2024 BCCRT 1278; and *Pansegrau v. Air Canada*, 2024 BCCRT 1297.

[102] Both decisions are based on the proposition that compensation pursuant to the *Passenger Regulation* is a claim for relief in the form of enforcing a contractual debt. In *Reshaur*, the Tribunal found the relief analogous to a debt since the claimant sought as “[a] specific sum of money due and payable under or by virtue of a contract [whose amount] must either be already ascertained or capable of being ascertained as a mere matter of arithmetic”: at paras. 7, 19. The Tribunal decided

that ordering a carrier to pay the standard compensation is not functionally different than ordering a carrier to pay a debt.

[103] Similar reasoning was employed in *Pansegrau*, but the Tribunal also concluded that the *Passenger Regulation* did not explicitly remove a person's right to sue for a breach of contract. Therefore, that right survived and operates parallel to the *Passenger Regulation* compensation scheme: *Pansegrau* at para. 15.

[104] For all the reasons in this judgment, I find that Tribunal's conclusion that a claim for compensation under the *Passenger Regulation* is a claim for a contractual debt is incorrect. Whether WestJet was obliged to compensate the Passengers for their delayed flights was not a matter of simple arithmetic. Although the compensation amount is pre-determined, the obligation to pay depends on whether the cancellation was out of WestJet's control because of a "labour disruption" within the meaning of s. 10(1)(j) of the *Passenger Regulation*. Deciding that issue is not the same as interpreting a contractual term negotiated by the parties. It involves the interpretation and application of federal legislation over which the Agency, and not the Tribunal, has expertise.

[105] Moreover, the Tribunal's reasoning that the right to sue in debt for compensation for delayed fights can co-exist in parallel to the regulatory scheme simply because it was not explicitly removed by the *CTA* or *Passenger Regulation* is tautological. The Supreme Court of Canada noted there is no provision in the *Passenger Regulation* for seeking compensation in court: *International Air* at para. 97. Neither the Provincial Court nor the Tribunal have any original or inherent jurisdiction. They have only the jurisdiction explicitly delegated to them by the provincial legislature. Neither can assume jurisdiction by assuming there is a lacuna in federal legislation.

[106] In addition, practically speaking, permitting tribunals other than the Agency to have jurisdiction to interpret and apply the *Passenger Regulation* opens the door to conflicting interpretations across the country, which undermines the Agency's authority to administer the *Passenger Regulation* as part of its duties for the

regulation of air transportation. It is also contrary to the policy objectives of the *Passenger Regulation* and the aims of the *Montreal Convention*, which both seek to achieve uniformity in the rules governing the obligations and liability of air carriers for, among other things, delays and cancellations.

[107] After the hearing, the petitioner brought *Lareau* to my attention and sought to convene a hearing to make submissions on it (WestJet did not agree that a hearing was necessary). I declined to convene a hearing. In my view, the decision is entirely consistent with my reasoning.

[108] Apart from the legal reasoning, I add that the discussion in *Lareau* illustrates the practical disadvantages of allowing parallel proceedings. The Federal Court outlines in detail the legislative backdrop to the enactment of the *Passenger Regulation* (paras. 8–30), an endeavour that obviously benefited from that Court’s inherent familiarity with the Agency and the *CTA*.

[109] For all those reasons, I conclude that the Tribunal wrongly concluded it had jurisdiction to entertain the Passengers’ claim.

VII. CONCLUSIONS

[110] For the reasons stated in this judgment, I conclude:

- a) Compensation for delayed or cancelled flights under *CTA* and *Passenger Regulation* as incorporated into WestJet’s tariff with the Passengers is not a debt enforceable at common law.
- b) The assignment entered into between the Passengers and the petitioner is invalid and unenforceable.
- c) The petitioner does not have standing to bring the petition.
- d) The Tribunal lacked jurisdiction to decide the Passengers’ claim.

[111] The first three conclusions support a conclusion that the petition should be dismissed. However, the fourth conclusion suggests the Decision should be

quashed for the Tribunal's lack of jurisdiction. I am mindful that the no party sought to quash the Decision based on what I have concluded is the Tribunal's lack of justification. For that reason, it is my view that I should not grant any order until the parties have had an opportunity to address the issue of remedy.

[112] I have also declined at this time to address the following issue: was the disruption of the Passengers' journey to Rome due to a labour dispute meaning WestJet did not owe compensation pursuant to s. 19 of the *Passenger Regulation*? In light of this judgment, I also invite the parties to address whether this Court can or should opine on that issue.

[113] For those reasons, I direct that:

- a) Counsel for the petitioner canvas with counsel for WestJet and the Tribunal as to their availability to attend a 30-minute judicial management conference before me to be scheduled at 9:15 a.m.
- b) Counsel for the petitioner identify at least three dates when all counsel are available. Once those dates have been identified, counsel for the petitioner should complete an online Request to Appear referencing this Judgment.
- c) The purpose of that appearance is for each party to advise whether they believe it is appropriate and advisable for the Court to receive, at a later hearing, further submissions about:
 - i. what remedy should be granted in light of this judgment?
 - ii. can or should this Court express an opinion on whether the flight disruption was caused by a labour dispute and therefore out of WestJet's control such that no compensation is owed to the Passengers?
- d) In the event any party is of the view that a judicial management conference is unnecessary or inappropriate, I would ask counsel for the

petitioner to include that view when completing the online Request to Appear.

“Sharma J.”